

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICHOLAS FRANCIS PHILLIPS,

Plaintiff,

v.

GENERAL MOTORS LLC,

Defendant.

Case No. 1:24-cv-00537-JLT-SAB

ORDER STRIKING FIRST AMENDED
COMPLAINT

(ECF No. 16)

On April 3, 2024, Plaintiff Nicholas Francis Phillips filed a complaint in this matter alleging violations of the Song-Beverly Consumer Warranty Act. (ECF No. 1-1.) On May 6, 2024, Defendant General Motors filed an answer to the complaint in state court and removed this matter to the Eastern District of California. (ECF Nos. 1, 8-1.) On September 20, 2024, Plaintiff filed a first amended complaint in this matter. (ECF No. 16.)

Amendment of the complaint is governed by Rule 15 of the Federal Rules of Civil Procedure which provides that a party may amend the party's pleading once as a matter of course within twenty-one days of serving it or within twenty-one days after a motion to dismiss has been filed. Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend only by leave of the court or by written consent of the adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a)(2).

In this action, Defendant filed an answer to the complaint on May 6, 2024, and Plaintiff

1 must either get the written consent of the opposing party or seek leave from the Court to file a
2 first amended complaint. Fed. R. Civ. P. 15(a)(2). Further, the scheduling report issued on
3 September 12, 2024, informed the parties,

4 Any motions or stipulations requesting leave to amend the pleadings must be filed
5 by no later than **September 20, 2024**. The parties are advised that filing motions
6 and/or stipulations requesting leave to amend the pleadings does not reflect on the
7 propriety of the amendment or imply good cause to modify the existing schedule,
8 if necessary. All proposed amendments must (A) be supported by good cause
9 pursuant to Fed. R. Civ. P. 16(b) if the amendment requires any modification to
the existing schedule, see Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
609 (9th Cir. 1992), and (B) establish, under Fed. R. Civ. P. 15(a), that such an
amendment is not (1) prejudicial to the opposing party, (2) the product of undue
delay, (3) proposed in bad faith, or (4) futile, see Foman v. Davis, 371 U.S. 178,
182 (1962).

10 Plaintiff did not file a written stipulation to amend nor was leave sought from the Court to
11 file a first amended complaint.

12 Accordingly, IT IS HEREBY ORDERED that Plaintiffs' first amended complaint (ECF
13 No. 16) is stricken from the record.

14
15 IT IS SO ORDERED.

16 Dated: **September 23, 2024**


UNITED STATES MAGISTRATE JUDGE